

ASSEMBLY BILL

No. 1787

Introduced by Assembly Member Swanson

February 10, 2010

An act to amend Section 11346.2 of the Government Code, relating to administrative procedures.

LEGISLATIVE COUNSEL'S DIGEST

AB 1787, as introduced, Swanson. Administrative procedure: regulations: narrative description.

The Administrative Procedure Act generally sets forth the requirements for the adoption, publication, review, and implementation of regulations by state agencies. The act requires every state agency subject to the act to submit to the Office of Administrative Law, and make available to the public, a copy of the express terms of the proposed regulations using underline or italics to indicate additions to, and strikeout to indicate deletions from, the California Code of Regulations.

This bill would additionally require the agency to include a narrative description of the additions to, and deletions from, the California Code of Regulations.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 11346.2 of the Government Code is
- 2 amended to read:
- 3 11346.2. Every agency subject to this chapter shall prepare,
- 4 submit to the office with the notice of the proposed action as

described in Section 11346.5, and make available to the public upon request, all of the following:

(a) A copy of the express terms of the proposed regulation.

(1) The agency shall draft the regulation in plain, straightforward language, avoiding technical terms as much as possible, and using a coherent and easily readable style. The agency shall draft the regulation in plain English.

(2) The agency shall include a notation following the express terms of each California Code of Regulations section, listing the specific statutes or other provisions of law authorizing the adoption of the regulation and listing the specific statutes or other provisions of law being implemented, interpreted, or made specific by that section in the California Code of Regulations.

(3) The agency shall use underline or italics to indicate additions to, and strikeout to indicate deletions from, the California Code of Regulations.

(4) The agency shall also include a narrative description of the additions to, and deletions from, the California Code of Regulations.

(b) An initial statement of reasons for proposing the adoption, amendment, or repeal of a regulation. This statement of reasons shall include, but not be limited to, all of the following:

(1) A statement of the specific purpose of each adoption, amendment, or repeal and the rationale for the determination by the agency that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose for which it is proposed. Where the adoption or amendment of a regulation would mandate the use of specific technologies or equipment, a statement of the reasons why the agency believes these mandates or prescriptive standards are required.

(2) An identification of each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies in proposing the adoption, amendment, or repeal of a regulation.

(3) (A) A description of reasonable alternatives to the regulation and the agency's reasons for rejecting those alternatives. In the case of a regulation that would mandate the use of specific technologies or equipment or prescribe specific actions or procedures, the imposition of performance standards shall be considered as an alternative.

1 (B) A description of reasonable alternatives to the regulation
2 that would lessen any adverse impact on small business and the
3 agency's reasons for rejecting those alternatives.

4 (C) Notwithstanding subparagraph (A) or (B), an agency is not
5 required to artificially construct alternatives, describe unreasonable
6 alternatives, or justify why it has not described alternatives.

7 (4) Facts, evidence, documents, testimony, or other evidence
8 on which the agency relies to support an initial determination that
9 the action will not have a significant adverse economic impact on
10 business.

11 (5) A department, board, or commission within the
12 Environmental Protection Agency, the *Natural* Resources Agency,
13 or the Office of the State Fire Marshal shall describe its efforts, in
14 connection with a proposed rulemaking action, to avoid
15 unnecessary duplication or conflicts with federal regulations
16 contained in the Code of Federal Regulations addressing the same
17 issues. These agencies may adopt regulations different from federal
18 regulations contained in the Code of Federal Regulations
19 addressing the same issues upon a finding of one or more of the
20 following justifications:

21 (A) The differing state regulations are authorized by law.

22 (B) The cost of differing state regulations is justified by the
23 benefit to human health, public safety, public welfare, or the
24 environment.

25 (c) A state agency that adopts or amends a regulation mandated
26 by federal law or regulations, the provisions of which are identical
27 to a previously adopted or amended federal regulation, shall be
28 deemed to have complied with subdivision (b) if a statement to
29 the effect that a federally mandated regulation or amendment to a
30 regulation is being proposed, together with a citation to where an
31 explanation of the provisions of the regulation can be found, is
32 included in the notice of proposed adoption or amendment prepared
33 pursuant to Section 11346.5. However, the agency shall comply
34 fully with this chapter with respect to any provisions in the
35 regulation that the agency proposes to adopt or amend that are
36 different from the corresponding provisions of the federal
37 regulation.

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